January 15, 2003

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 220554

Re: ***Ex Parte*: Review of the Unbundling Obligations of Incumbent Local Exchange Carriers--CC Docket No. 01-338; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996--CC Docket CC No. 96-98; Deployment of Wireline Services Offering Advanced Telecommunications Capability--CC Docket No. 98-167**

Dear Ms. Dortch:

Broadview Networks, Eschelon and TalkAmerica hereby respond to Verizon Communications' ("Verizon") December 23, 2002 submission, in which Verizon disingenuously argues that neither that the hot cut process, nor the price of hot cuts will impair CLECs in the absence of unbundled circuit switching. Further, Verizon argues that the existing hot cut process "works and can continue to work regardless of how hot cut volumes may increase."[1] The Verizon *Ex Parte* contains a number of patently false claims which are fully addressed herein.

Price: Verizon states in its *Ex Parte* that the "hot-cut rates average approximately $36 across Verizon's territory, far less that the excessive rates CLECs claim they face."[2] Verizon further states that "rates for hot cuts must be TELRIC-based, and CLECs routinely fight to assure

[1] *See Ex Parte* Letter from Verizon to Marlene Dortch, FCC, CC Docket Nos. 01-338, 96-98 and 98-147 (Filed Dec. 23, 2002) at 6 ("Verizon *Ex Parte*" or "*Ex Parte*").

[2] Verizon *Ex Parte*, 1.

that these recharges are set at levels acceptable to them."[3] What Verizon fails to acknowledge, however, is that the $36 weighted average hot-cut rate it cites in its *Ex Parte* as the norm is nothing more than a temporary promotional rate for hot cut nonrecurring charges ("NRCs") that expires just over twelve months from now. The temporary promotional hot cut rate had its genesis in the New York Verizon Incentive Plan proceeding.[4] There, Verizon "voluntarily" agreed to the temporarily lower rate as part of a *quid pro quo* (the hot cut NRC was one of the items Verizon negotiated in exchange for permission from the New York Commission to raise retail rates in New York). Verizon had originally proposed a hot-cut rate of $185 per hot cut in New York.[5] Shortly after the conclusion of the New York proceeding, and in order to avoid controversy over its much higher proposed permanent hot cut rates, Verizon exported the temporary promotional rate to several other states where it had 271 applications pending.

In fact, Verizon withdrew from the Commission its first New Jersey 271 application over concerns regarding its hot-cut rates. On March 6, 2002, day 76 of the first New Jersey application, the New Jersey Board released its Final UNE Rate Order, which established hot-cut rates that varied form $159.76 to $184.82 depending on the type of hot cut. The New Jersey Board filed the UNE rate order with the FCC, and, on March 8, 2002, the FCC issued a public notice asking for expedited comment on it. On March 19, 2002, day 89 of the New Jersey application, Verizon notified the Commission that it was withdrawing its application as a result of "process concerns" that were raised with respect to the non-recurring charge for performing a hot cut. The next day, Verizon informed the New Jersey Board that, effective immediately, it would reduce the effective hot-cut rate in New Jersey to the same level – $35 – made effective in New York as a result of the Verizon Incentive Plan negotiation. After it exported the temporary $35 rate adopted in the New York case to New Jersey[6] Verizon also adopted the rate in

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3 *Id.*

4 *See Order Instituting Verizon Incentive Plan,* New York Public Service Commission Case 00-C-1945, Proceeding on the Motion of the Commission to Consider Cost Recovery by Verizon and to Investigate the Future Regulatory Framework; Case 98-C-1357, Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements (Feb. 27, 2002).

5 *See Order Instituting Proceeding,* New York Public Service Commission Case 02-C-1425 Proceeding on Motion of the Commission to Examine the Process, and Related Costs of Performing Loop Migrations on a More Streamlined (*e.g.* Bulk) Basis (Nov. 22, 2002) ("New York Loop Migration Proceeding").

6 *See* Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in New Jersey, 17 FCC Rcd 12275, ¶ 26 (June 24,2002).

Delaware, Rhode Island, and any other state in its region where the rate was deemed necessary to help along 271 approval.[7]

What Verizon's *Ex Parte* glaringly fails to acknowledge is that the temporary $35 hot-cut NRC expires in just over a year in New York—February 2004. In New Jersey it is only in effect until March 1, 2004. By that time Verizon will have obtained Section 271 approvals in its entire region, and accordingly have absolutely no incentive to "negotiate" with CLECs, state commissions, or anyone else. Rest assured there will be no "bargain" hot-cut rates. Instead, Verizon will, no doubt, retreat to its original proposals, and insist that hot cut NRCs of $185 to $200 are consistent with TELRIC. To argue, as Verizon does, that the existence of a temporarily reduced promotional hot-cut NRC eliminates any impairment stemming from hot cut costs defies common sense and empirical experience.

In its *Ex Parte*, Verizon also argues that the hot cut process affords CLECs a competitive advantage over incumbent LECs because CLECs can avoid the up-front cost of building out a loop for a new customers, but instead can pay the "much lower hot cut rate" to connect the customer to the CLEC's switch."[8] Verizon conveniently overlooks the fact that its loop costs were subsidized by ratepayers during the time that Verizon enjoyed a government sanctioned monopoly. Moreover, Verizon fails to acknowledge the fact that the hot cut NRC does not include all costs that carriers could incur in moving a line to UNE-L, such as service order charges, manual intervention surcharges, and if applicable, premise visit surcharges. Thus, in some states in Verizon territory, New Jersey, for example, the total charge for performing a hot cut is higher than the cost of purchasing a brand new loop (See Attachment). Accordingly, Verizon's assertion that the hot cut process provides CLECs with a "competitive advantage" over Verizon is patently ridiculous.

Reliability/Scalability In the face of common sense, not to mention the findings of the New York Commission, Verizon asserts that it is "well equipped to handle the hot cut volumes CLECs allege they will offer in the future" in the event that UNE-P is eliminated. In support of this untenable assertion, Verizon cites its on-time performance in Massachusetts, Pennsylvania and New Jersey, and the existence of a procedure to manage "bulk migrations" (*i.e.*, over five lines) on a project basis.[9]

7 *See* Application by Verizon New England, Inc., Verizon Delaware, Inc.; Bell Atlantic Communications, Inc.(d/b/a Verizon Long Distance),NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In region, InterLATA Services in New Hampshire and Delaware, WC Docket 02-157, *Memorandum Opinion and Order*, 17 FCC Rcd 18660, (September 25, 2002).

8 Verizon *Ex Parte*, 2.

9 Verizon *Ex Parte*, 3. For some mysterious reason, Verizon fails to include the statistics associated with its performance in New York, the state where it no doubt performs the greatest number of hot cuts.

The Commission should conduct its own analysis of what it actually means for Verizon to have allegedly complied with the "% On-Time Performance—Hot Cut" performance metrics across the Verizon region (which are based upon the metrics established by the New York Commission). If the Commission undertook such an analysis it would reveal that Verizon's assertion of compliance with the "% On-Time Performance—Hot Cut," metric does not demonstrate that existing hot cut procedures are capable of handling large volumes of hot cuts.

The fact that Verizon has performed it hot cuts "on time" (*i.e.* in New York, the relevant metric is "On Time Performance-Hot Cut" PR-9-01) merely indicates that the hot cut was completed within the one hour window in which it was scheduled for completion, even if that one hour window was postponed from one day to the next, and even if the hot cut took place outside the five day deadline, to the extent that metric is applicable. That is, the "% On Time Performance-Hot Cut"[10] metric fails to capture critical measures that would show if the hot cut was actually completed within the standard interval (*i.e.* % Completed in 5 Days (1-5 Lines—No Dispatch) Hot Cut Order, PR-3-08) and whether the hot cut was completed with no disruption to the customer (*i.e.* % Installation Troubles Reported within seven (7) days Hot Cut Loop, PR-6-02.)

Besides failing to demonstrate whether or not Verizon performed the hot cut on the scheduled due date, the "on time" performance metric also fails to tell the story regarding the quality of the hot cut following the cut-over. Accordingly, the fact that Verizon may have performed the hot cut "on time" fails to capture the subsequent troubles that are, in the experience of most CLECs, rampant on hot cut orders. At bottom, "on time" performance is of absolutely of no consequence unless Verizon can also demonstrate that as a result of its "on-time" performance the CLEC experienced no customer dissatisfaction and no customer churn. Verizon is obviously not capable of making this showing, as evidenced by its omission of the Installation Quality (Percent Troubles with 7 days, PR-6-02) data from the *Ex Parte.*

Furthermore, Verizon argues that while the five day completion interval (*i.e.* % Completed Within 5 Days) does not apply to project-managed hot cut orders, Verizon maintains that "all other critical performance measures" do apply.[11] In Broadview's experience, however, Verizon ensures that those measures do not apply by requiring Broadview to execute a waiver agreeing that its projects will be excluded from the metrics as a condition precedent to such projects being undertaken. Broadview must agree that to the extent the special handling of its

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10 The New York metric is % Completed in 5 Days (1-5 Lines—No Dispatch) Hot Cut Loop, PR-3-08.

11 Verizon *Ex Parte*, 4.

orders causes Verizon to miss performance standards in either its ordering or provisioning metrics that Broadview's orders will be excluded from the performance metrics reported. Indeed, Verizon indicates that the "installation measures, on-time performance, and all maintenance metrics do apply," but what Verizon fails to acknowledge is that a critical metric, Installation Quality (Percent Troubles within 7 days), does not apply because Verizon requires carriers to waive applicability of provisioning metrics. The Commission should accord no credibility to Verizon's claim that it can handle hot cuts on a project-managed basis as well as it handles hot cuts on an order by order basis, given the fact that Verizon has failed to provide the data that indicates that the quality of the cut is not impacted when managed as a project.

Verizon's *Ex Parte* speculates that the hot cut process "works and will continue to work even if hot cut volumes substantially increase."[12] Moreover, Verizon grossly mischaracterizes the New York Commission's order when Verizon states that the Commission has found that "the hot cut process is working and no further examination is required."[13] To the contrary, the New York order cited by Verizon was the order *instituting the proceeding* to examine the problem of "bottlenecks in the current process for providing hot-cuts" and the changes that will be necessary to handle larger volumes of hot cuts in the future.[14] Indeed, far from finding that Verizon is "well equipped" to handle future volumes of hot cuts, the New York Commission stated that the existing manual hot-cut process (referring to smaller individual requests for one or a small number of loops) is working effectively—at least for the volume of hot-cuts *currently being done*.[15] Accordingly, it is clear that under existing hot cut methods and procedures, there is no possible way that Verizon could manage the hot cut volumes that would coincide with the elimination of UNE-P. Furthermore, there is absolutely no evidence on this record to support Verizon's specious claim that the hot cut process "can continue to work regardless of how hot cut volumes may increase." To the contrary, there is voluminous evidence, including the very existence of the New York Commission's loop migration proceeding, that prove exactly the opposite—that CLECs would undeniably be impaired by the hot cut process in the event that UNE-P and circuit switching were not available.[16]

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12 Verizon *Ex Parte*, 2.

13 Verizon *Ex Parte*, 2, n. 2 citing the New York Loop Migration Proceeding order.

14 *See* New York Loop Migration Proceeding.

15 *Id.* 4.

16 Verizon *Ex Parte*, 6.

Verizon cites the existence of its Wholesale Provisioning Tracking System ("WPTS") as evidence that the hot cut process can be effectuated in a timely fashion on a large scale.[17] While Broadview agrees with Verizon that the existence of the WPTS is a step in the right direction in terms of improving the hot cut process, it is clear from Broadview's perspective that the WPTS system must be available via an EDI interface to eliminate the manual process required to issue the "activate" order for the port. An electronic interface is essential to supporting higher volumes of cutovers. While it is true that implementation of WPTS has eliminated the need for CLECs to call Verizon's ordering center (*i.e.* the "TISOC") to ascertain the status of service orders, what Verizon fails to acknowledge is that the WPTS still requires a number of other manual interventions on the part of CLECs. Specifically, carriers must continuously manually poll the WPTS system to check to see when each hot cut is complete so that the CLEC can issue the "activate" order for the port. A customer is unable to receive inbound calls until the activate is complete. Despite the fact that Broadview is among the most system-oriented and technologically advanced carriers, Broadview remains forced to manually check each hot cut order's status, even with the existence of the WPTS system.

In its *Ex Parte*, Verizon claims that, contrary to Broadview's statement that Verizon is able to perform only 125 hot cuts per day per central office, Verizon presently has a 150 hot cut per central office guideline.[18] Although Broadview has not recently requested to revisit this limitation, in recent months Broadview has been asked to reschedule its cuts because another CLEC was cutting lines in that central office. Moreover, in Verizon's *Ex Parte* filed on January 10, 2003 at 6, Verizon states that it "can convert mass market arrangements on a negotiated, project managed basis, just as it previously has done successfully for customers of carriers like Broadview and AT&T." Broadview's experience with the project managed hot cut has been primarily with small business customers as opposed to the mass market. Verizon goes on to state that CLECs are typically responsible for hot cut problems, and that CLECs need to make sure that they are capable of handling their part of the hot cut process. This is a complete misstatement of the facts. Broadview's operations personnel have diligently worked with Verizon for over three years to improve the hot cut process and has continually instituted new internal processes to improve the quality of its cuts. Broadview also has spent millions of dollars to improve its systems and to automate processes, and has deployed its state-of-the-art test equipment in everyone of its collocation cages to help with the diagnosis of repair, wiring, and loop issues. Even with the work that has been done, there continue to be quality issues with hot cuts that will no doubt persist as hot cut volumes increase.

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17 *Id.* 4.

18 Verizon *Ex Parte*, 6.

Verizon Vice Chairman Lawrence T. Babbio Jr. last week made clear that it is not Verizon's goal to "transition" UNE-P carriers to UNE loop competition, but rather he stated that Verizon's goal is to eliminate competitors through any means necessary. Referring to Verizon's longstanding opposition to the UNE-P rules, he said, "I have been relatively polite in saying we want to address this issue." More bluntly, Mr. Babbio said, "I would want to say, `Kill those little suckers.' That's how we feel about UNE-P." The Commission should bear Mr. Babbio's statement in mind as it considers the evidentiary weight of submissions such as Verizon's hot cut *Ex Parte*.

Sincerely,

/s/

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Broadview Networks

Jeff Oxley, General Counsel
Eschelon Communications

George Vinal, Executive Vice President
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Talk America

cc: Michael K. Powell, Chairman
Kevin J. Martin, Commissioner
Kathleen Abernathy, Commissioner
Jonathan S. Adelstein, Commissioner
Michael J. Copps, Commissioner
Christopher Libertelli
Daniel Gonzalez
Matthew Brill
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Jordan Goldstein
William Maher
Richard Lerner
Scott Bergmann
Michelle Carey
Rob Tanner
Gina Spade
Jeremy Miller
Mike Engel
Aaron Goldberger
Dan Shiman

Summary of UNE Loop Non-Recurring Rates per effective State Tariff/Commission Order

New Loop		NY*		NJ*
SO	$	9.01	$	2.31
Svc Connection - CO Wiring or Install	$	39.59	$	23.15
Svc Connection - Other	$	0.13		
Total	**$**	**48.73**	**$**	**25.46**

Hot Cut - Temporary				
SO	$	9.01	$	2.31
Svc Connection - CO Wiring or Install	$	35.00	$	35.00
Svc Connection - Other				
Total	**$**	**44.01**	**$**	**37.31**

Hot Cut - Proposed				
SO	$	9.01	$	2.31
Svc Connection - CO Wiring or Install	$	69.44	$	157.76
Svc Connection - Other	$	107.09		
Total	**$**	**185.54**	**$**	**160.07**

***Note: Hot Cut Rate is temporary at $35.00 in NY and NJ.**

*** - proposed Pennsylvania rates**